

1 IN THE UNITED STATES DISTRICT court
2 SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

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5
6 BRUCE WOODS, : CIVIL ACTION NO. 1:00cv803
7 Petitioner, :
8 Vs. :
9 WANZA JACKSON, :
10 Respondent. : .

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14 The deposition of **BRUCE WOODS**, Plaintiff herein,
15 taken as on Cross-Examination by the Defendant, pursuant
16 to the Federal Rules of Civil Procedure, notice and
17 agreement of counsel to take deposition at the Warren
18 Correctional Institute, State Route 63, Lebanon, Ohio
19 45036 on Wednesday, April 20, 2005, 10:30 a.m. before
20 Shandy Ehde, a court reporter and Notary Public.

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1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFF:

3 **GREGORY W. MEYERS, ESQ.**

4 Ohio Public Defender's Office

5 8 East Long Street

6 Columbus, Ohio 43215

7 ON BEHALF OF THE DEFENDANT:

8 **STUART A. COLE, ESQ.**

9 **JERRI FOSNAUGHT, ESQ.**

10 Attorney General's Office

11 150 E. Gay Street

12 Columbus, Ohio 43215

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14 It is stipulated by counsel for the respective
15 parties that the foregoing deposition may be taken at the
16 time and place stated pursuant to the Federal Rules of
17 Civil Procedure and notice and agreement of counsel to
18 take deposition, that proof of the official character and
19 qualification of the notary is waived; that the
20 deposition may be taken in stenotypy by Shandy Ehde,
21 Registered Professional Reporter and Notary Public in and
22 for the State of Ohio and transcribed by computer out of
23 the presence of the witness and submission to the witness
24 for examination and signature was waived.

1 EXHIBITS

| | | |
|-----|-------------------------|----|
| 2 1 | Affidavit | 10 |
| 3 2 | Notice of Appeal | 31 |
| 4 3 | Entry dismissing appeal | 31 |
| 5 4 | Letter dated 2/6/98 | 33 |
| 6 5 | Memorandum dated 2/6/98 | 34 |
| 7 6 | Letter dated 5/31/98 | 35 |
| 8 7 | Letter dated 5/26/98 | 35 |

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1 BRUCE WOODS

2 plaintiff herein, being first duly sworn as hereinafter
3 certified, was examined and deposed as follows:

4 CROSS-EXAMINATION

5 BY MR. COLE:

6 Q. Morning, Mr. Woods. My name is Stuart
7 Cole. I'm here representing the Ohio Attorney General's
8 Office, representing the respondent and warden in this
9 case. You're here with your attorney, Mr. Meyers, from
10 the Ohio Public Defenders Office. We're here to take a
11 deposition in the habeas corpus action which you brought
12 in Case No. 1:00cv803; is that correct?

13 A. Yes, it is.

14 Q. How have you prepared for this deposition
15 today?

16 A. Other than getting a letter saying that you
17 was going to be here --

18 Q. You haven't reread any of the pleadings
19 filed by the parties then?

20 A. I read Mr. Perkins' deposition.

21 Q. You did read Mr. Perkins' deposition?

22 A. Yes.

23 Q. Was there anything in Mr. Perkins'
24 deposition that you felt was incorrect, disputed?

25 A. Maybe some minor things.

1 Q. Such as?

2 A. Just minor. I can't remember offhand.

3 Q. Nothing relating to the sum and substance
4 of your claims in this case?

5 A. I don't think so.

6 Q. Okay. How old are you, Mr. Woods?

7 A. Thirty-eight.

8 Q. You're from Cincinnati; is that correct?

9 A. Yes.

10 Q. Did you graduate from high school?

11 A. No.

12 Q. What was the last grade you completed?

13 A. Tenth.

14 Q. You can read and write?

15 A. Yes.

16 Q. In your petition, correct me if I'm wrong,
17 you're challenging your current conviction, that of
18 aggravated burglary, robbery and kidnapping?

19 A. Yes.

20 Q. Is this your first felony conviction?

21 A. No, sir.

22 Q. What was your first felony conviction?

23 A. I don't know.

24 Q. Perhaps if I refresh your recollection,
25 could it have been a robbery in December of 1985?

1 A. That could be correct.

2 Q. Do you recall whether or not you pled
3 guilty or actually had a trial in that case?

4 A. I pled guilty.

5 Q. Do you remember who your attorney was?

6 A. No.

7 Q. Did you appeal that conviction?

8 A. I don't remember.

9 Q. You may have?

10 A. No, I don't remember if I appealed it or
11 not. I don't think so, though.

12 Q. Okay. What was your -- Have there been any
13 other additional felony convictions except for that
14 robbery conviction?

15 A. Yes.

16 Q. What was that?

17 A. I had trafficking marijuana and receiving
18 stolen property.

19 Q. And when was that conviction?

20 A. Where was it at?

21 Q. When?

22 A. '91.

23 Q. If I were to tell you it was August 13th,
24 1991, you wouldn't dispute that, I take it?

25 A. You said '91?

1 Q. I'm saying August 13th, 1991.

2 A. That sounds correct.

3 Q. Did you plead guilty or not guilty, if you
4 recall?

5 A. On the trafficking marijuana, I think it
6 went to trial.

7 Q. Was it a jury trial?

8 A. Yes.

9 Q. And you were found guilty. Who was your
10 attorney in that trial?

11 A. I don't remember.

12 Q. Were these two attorneys in your first and
13 second trial retained or appointed, if you recall?

14 A. The second one was, he was appointed. The
15 first one was, too.

16 MR. MEYERS: Just to clarify, when you
17 say first and second, we're referencing the
18 '85 and '91.

19 MR. COLE: The '85 robbery and the
20 1991 trafficking marijuana.

21 MR. MEYERS: Okay.

22 Q. The trafficking marijuana, did you appeal
23 that conviction?

24 A. I don't remember. I doubt it, though. I
25 don't remember.

1 Q. So if you did appeal it, you remember
2 nothing whatsoever about the appeal; is that your
3 testimony?

4 A. Yes.

5 Q. Okay. That brings us to your current
6 conviction. You were represented by Mr. Brian Perkins;
7 is that correct?

8 A. Yes.

9 Q. And how did it come that Mr. Perkins became
10 your attorney?

11 A. Well, he showed up at the Justice Center
12 one day, and then he was like -- he talked to some of the
13 family, they told him a little about the case. We got to
14 talking and he became my lawyer.

15 Q. Did somebody hire him or did he just show
16 up one day?

17 A. He talked to somebody and then he showed
18 up. And after we talked about the case, he was like,
19 this is what I need.

20 Q. You say he talked to somebody. Who did he
21 talk to?

22 A. I think it was my mother.

23 Q. So he talked to a member of your family?

24 A. Right.

25 Q. A member of your family hired him?

1 A. Not until after we talked.

2 Q. Okay. You talked to him and then a member
3 of your --

4 A. He told me, he said, this is how much money
5 I need. Once this is dropped off, then we'll --

6 Q. How much money did he need?

7 A. The first time.

8 Q. (Nodded.)

9 A. \$1,500.

10 Q. So he told you he needed \$1,500?

11 A. Yes.

12 Q. And your mother paid him the \$1,500?

13 A. I believe so.

14 Q. And then he represented you through trial?

15 A. He came back again, we talked about the
16 case, what might happen, and then he started representing
17 me.

18 Q. Was his total fee \$1,500?

19 A. No.

20 Q. More?

21 A. The total fee was like 5,000.

22 Q. And who paid him the \$5,000?

23 A. It wasn't paid, the whole 5,000.

24 Q. Do you know how much he was paid?

25 A. Maybe 3,000.

1 Q. Okay. And who paid him this \$3,000?

2 A. Family members.

3 Q. Well, you mentioned your mother. Anybody
4 else pay him, that you know about?

5 A. Cousin might have paid.

6 Q. Okay. So your mother and cousin paid him
7 about \$3,000 to the best of your knowledge?

8 A. Correct.

9 Q. And to the best of your knowledge, he was
10 not fully paid?

11 A. No.

12 Q. And this \$5,000 was to represent you
13 through trial?

14 A. Yes.

15 Q. Did he ever threaten to withdraw from
16 representing you throughout the trial because he hadn't
17 been paid?

18 A. No.

19 Q. Were you generally satisfied with his
20 performance as defense counsel?

21 A. Most of the time, yes.

22 Q. So you were willing to have him represent
23 you on appeal then?

24 A. Yes.

25 Q. Okay. I'm going to hand you what I've

1 marked as Exhibit 1 --

2 (Exhibit No. 1 was marked
3 for identification.)

4 Q. -- Deposition Exhibit 1, and ask if you
5 would read it. And then I'll ask you some questions.

6 A. (Witness complied.)

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. Do you recall executing that affidavit?

10 A. Signing it, yes.

11 Q. Yes?

12 A. Yes.

13 Q. That is your signature on the bottom?

14 A. Yes.

15 Q. Do you today still stand by everything
16 that's in the affidavit?

17 A. Yes.

18 Q. So there's nothing in the affidavit that
19 you today believe not to be the truth?

20 A. Not that I can see.

21 Q. Okay. Let me ask you about line 5, "I was
22 advised of my appellate rights and I told my attorney to
23 file an appeal on my behalf."

24 Who advised you of your appellate rights?

25 A. The judge.

1 Q. Mr. Perkins also advise you of your
2 appellate rights?

3 A. No.

4 Q. Did you understand what the judge told you
5 about your appellate rights?

6 A. I understood it. I could appeal.

7 Q. So it's fair to say that this habeas corpus
8 petition is not a claim that you were not informed of
9 your right to appeal; is that a fair statement?

10 A. I don't understand the question.

11 Q. I'm asking you, is it fair to say that this
12 habeas corpus action, you're not claiming that you did
13 not know that you had a right to appeal? You did know
14 you had a right to appeal?

15 A. Yes, I did.

16 Q. Okay. Continuing on line 5, you told your
17 attorney to file an appeal on your behalf. Could you be
18 specific as to what exactly you told Mr. Perkins?

19 A. The judge said I had a right to appeal. He
20 asked me did I understand it. I told him yes. He asked
21 something else, and then I asked Mr. Perkins a question,
22 and then he told the judge, he said, I'll speak to him
23 about the appeal. So court was over, and then he said,
24 he was like, right now we don't need to worry about the
25 appeal, I'll be up to talk to you, because of the time he

1 had gave me.

2 So when he came back up, he just
3 basically -- he had a white piece of paper, he showed me
4 how much time I'll do. But he told me something about
5 the guns, or the way he gave me the gun spec was wrong,
6 some other things. It was like, I'm going to take care
7 of the appeal, and he was going to get in touch with me.

8 Q. Did you know how long you had to file an
9 appeal?

10 A. Did I?

11 0. Did you know?

12 A. No. 1

13 Q. Do you know today how long you have to file
14 an appeal if you're convicted?

15 A. The exact time?

16 O. Yes, that's my question.

17 A. No.:

18 0. Your answer was no?

19 A. Yes.

20 Q. How much did Mr. Perkins tell you that he
21 was going to charge you for this appeal?

22 A. He didn't. He just said, I'm going to get
23 in contact with you.

24 Q. Did you think he was going to do it for
25 free?

1 A. The appeal?

2 Q. Yes.

3 A. No.

4 Q. So you knew you would have to pay him?

5 A. Yes.

6 Q. Or somebody would have to pay him?

7 A. Yes. That we would have to pay him
8 something.

9 Q. And you never discussed fees at all?

10 A. Not at that time, no.

11 Q. Okay. He said he would get in touch with
12 you?

13 A. Yes.

14 Q. Get in touch with you before he would file
15 an appeal, after he would file an appeal, or how d

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1 A. The appeal?

2 Q. Yes.

3 A. No.

4 Q. So you knew you would have to pay him?

5 A. Yes.

6 Q. Or somebody would have to pay him?

7 A. Yes. That we would have to pay him
8 something.

9 Q. And you never discussed fees at all?

10 A. Not at that time, no.

11 Q. Okay. He said he would get in touch with
12 you?

13 A. Yes.

14 Q. Get in touch with you before he would file
15 an appeal, after he would file an appeal, or how did you
16 understand it?

17 A. I was thinking that the way to do it -- He
18 was saying, you have 30 days to get from here till here,
19 being the county, from there to prison. I was thinking
20 he would come over and see me in between now and then.

21 Q. So you thought he would see you to file --
22 to talk about your appeal?

23 A. Right. Because he needs to just walk over.
24 Most of the time he would just walk over.

25 Q. And did he subsequently come to see you?

1 A. No.

2 Q. Have you seen Mr. Perkins since then?

3 A. Since --

4 Q. I assume -- When was the last time you saw
5 Mr. Perkins?

6 A. '96.

7 Q. You were convicted and sentenced; am I
8 correct?

9 A. Right.

10 Q. The conversation we were just talking about
11 with Mr. Perkins, that was after you had just been
12 sentenced?

13 A. Right after.

14 Q. It was in the courthouse?

15 A. Exactly.

16 Q. Was that the last time you saw Mr. Perkins?

17 A. No.

18 Q. Okay. When did you subsequently see him?

19 A. I saw him two times after that.

20 Q. Where?

21 A. Like maybe two weeks before I was about to
22 get rode out to CRC, we sat down. He basically -- He
23 said, I'm handling your appeal. He asked if I still
24 wanted to appeal. I was like yes. He asked me, was the
25 number still the same as far as calling my mother. I

1 said yes. He was like, I'm going to be in touch with
2 you. At that time he had like a case that was going on,
3 he told me, because he explained to me he couldn't stay
4 that long.

5 Q. This is, you were in the county jail then?

6 A. Yes.

7 Q. This was two weeks after you were
8 convicted?

9 A. Two to three weeks.

10 Q. And he agreed to take your appeal, or he
11 did, or you just again were talking?

12 A. That's when I told him I wanted the appeal
13 and he said he would take care of it.

14 Q. Okay. At that time did you have any idea
15 how much you'd have to pay him?

16 A. No.

17 Q. You didn't talk about money at all?

18 A. Me and him? No.

19 Q. Did you talk about the issues you'd raised
20 on appeal?

21 A. Yes.

22 Q. What issues did you want to have raised?

23 A. I thought that he had -- When he said, what
24 do I think about a trial, I told him basically I thought
25 he had gave me too much time. He was saying that could

1 be true, because he tried to get all the offenses rolled
2 into one, but he was basically saying, right now it's
3 just looking good on the gun spec. He said that was one
4 of the main things he would be looking at.

5 Q. So you, yourself, had no specific issues
6 you wanted to have raised on appeal?

7 MR. MEYERS: Well, I would object to
8 any further inquiry. I don't think getting
9 into what could be the privileged nature of
10 the discussions between Bruce and Perkins
11 about what did or didn't happen on the merits
12 of that trial are a proper scope before this
13 depo. I don't believe they're material or
14 relevant to the questions at issue before the
15 Federal Court.

16 MR. COLE: Okay. I was not getting
17 into the merits of any issues, but asking him
18 to identify specific issues, I believe is
19 relevant. If he planned what he wanted to
20 have raised or didn't want to have raised is
21 very relevant as to the overall question if
22 he wanted, in fact, to pursue an appeal.

23 MR. MEYERS: Well, I maintain the
24 objection. I mean to ask Mr. Woods himself
25 as a lay person, limited formal education,

1 your question, if I remember, was what he
2 wanted appealed, is perilously close to
3 inviting him to talk to you directly about
4 his own sense of whether the underlying
5 conviction was correct or incorrect on the
6 merits, which would entail his discussing --

10 MR. MEYERS: All right.

11 Q. Can you identify any specific issues that
12 you wanted to have raised on appeal?

13 MR. MEYERS: Well, I object.

14 MR. COLE: I would ask the court
15 reporter to have, please have him answer the
16 question.

17 (Court reporter instructed witness
18 to answer question.)

19 MR. MEYERS: I, as counsel for
20 Mr. Woods, am advising him not to answer that
21 question at this time.

23 THE WITNESS: Yes.

24 MR. MEYERS: That being said, before we
25 leave here today, if I can have a private

1 minute with him, we can perhaps revisit when
2 we're together that question. But my
3 objection stands.

4 (Court reporter certifies
5 question.)

6 Q. I believe you testified a few moments ago
7 that you saw Mr. Perkins on two occasions after your
8 sentencing?

9 A. Yes.

10 Q. What was the second occasion?

11 A. By that time I had made it to WCI, and me
12 and another inmate were talking. I knew they had some
13 information that he related to his mother but his mother
14 again related it to his attorney. Come to find out his
15 attorney was Brian Perkins. They called me back to court
16 as a witness.

17 Q. I'm not sure I just followed what you just
18 said.

19 A. I was at WCI --

20 MR. MEYERS: Could I ask just for
21 clarification? Explain, can you, in this
22 answer what you mean when you say you were
23 here at WCI and how that might relate to
24 helping Mr. Cole understand the time frame
25 involved. In other words, was WCI your first

1 parent institution? Why don't you explain
2 that?

3 A. I had already left the county jail, went to
4 receiving, did my 30 days at receiving. Thirty days, two
5 weeks or something like that. I ended up here at WCI to
6 start my time.

7 I was on the yard, talking to another
8 inmate. He was telling me about how his brother was
9 going through a robbery conviction, a robbery case, bank
10 robbery case. I brought up another inmate's name that I
11 was a cellmate with at the time. I was like, dude, you
12 told me this dude didn't have nothing to do with it. But
13 the detectives was expecting him. He told his mother.
14 Brian Perkins happened to be his lawyer. And he asked
15 me, would you go to court and explain what the dude told
16 you.

17 Q. So you testified in a trial where Brian
18 Perkins was defense counsel for somebody; is that what
19 you're saying?

20 A. Yes.

21 O. And you talked to Mr. Perkins at that time?

22 A. Correct.

23 Q. How did that come about? When did you
24 speak with him?

25 A. When I went back to the county jail.

1 Q. He came to visit you a second time?

2 A. He came to visit me on that case.

3 Q. And this had been over 30 days after your
4 conviction?

5 A. Yes. You said 30 days, right? Yes.

6 Q. What did you guys talk about?

7 A. He asked me, how did I know, how did I
8 know -- he gave me the dude's name and --

9 Q. Let me ask, did you and Mr. Perkins talk
10 about the status of your appeal?

11 A. No.

12 Q. Your appeal didn't come up at all?

13 A. At the end of the -- As I testified, yes,
14 it came up. Basically he was like, it takes time.

15 Q. Did he tell you that he had filed an
16 appeal?

17 A. I believe so.

18 Q. Did he talk about how much you were going
19 to pay him?

20 A. At that time, no.

21 Q. Did you ever talk to Mr. Perkins about
22 paying him for representing you?

23 A. No.

24 Q. Did you ever talk to Mr. Perkins about
25 representing you as appointed counsel?

1 A. On the appeal?

2 Q. Yes.

3 A. No.

4 Q. But you believed he was representing you at
5 that time?

6 A. He said he was.

7 Q. Did you ever talk to anybody in your family
8 about paying Mr. Perkins a fee for pursuing an appeal on
9 your behalf?

10 A. Basically I just -- I let my mother and my
11 aunt know if he asked for the money, let me know what it
12 was so I could pay it back.

13 Q. And did he ever tell you that he wanted
14 money for an appeal?

15 A. He -- They said he wasn't taking calls at
16 that time.

17 Q. So they were unable to reach him?

18 A. No. When they did call, he was either out
19 or busy or something.

20 Q. So to the best of your knowledge, he was
21 never paid by anybody to pursue an appeal?

22 A. Right.

23 Q. Okay. Line 6 of your affidavit, "I told my
24 attorney that I wanted to appeal and expected him to file
25 the necessary appeal papers."

1 Tell me if I'm wrong, your response today
2 is that Mr. Perkins said he would do that; is that what
3 your testimony is?

4 A. Yes.

5 Q. Then line 8 says, "My trial counsel failed
6 to file notice of appeal."

7 What's your basis for saying that?

8 A. Are you asking, why did I say that?

9 Q. What's the basis for that statement? How
10 did you know that he never filed the notice of appeal?

11 A. After I wrote the Public Defenders Office,
12 they wrote me back, had me sign some paperwork. I
13 thought no appeal was filed.

14 Q. You're telling me that the only reason you
15 believe that no appeal was filed is because the Public
16 Defender told you; is that what you just testified to?

17 A. No.

18 Q. Okay.

19 A. I'm saying this line that you're asking
20 about, what I'm saying is, I agreed to this line but
21 they're not my words.

22 Q. You're saying the Public Defender wrote
23 that line?

24 A. After he took my words about my appeal.

25 Q. So my question is, you agree with that

1 line?

2 A. Yes.

3 Q. Okay. What is the basis for your belief
4 that Mr. Perkins failed to file a notice of appeal?

5 A. I just believe that he didn't. At that
6 time, I believe no appeal was filed.

7 Q. How about today?

8 A. Well, I know now that an appeal was filed,
9 but back then, I mean, I wasn't getting no legal mail, he
10 wasn't accepting calls, so I honestly believed that.

11 Q. Okay. In the habeas corpus petition you
12 wrote, and I'm quoting, and I'll show it to you if you
13 wish to see it, you make the statement, "Appointed
14 counsel refused to file an appeal despite repeated
15 requests." Now you said appointed counsel. Are you
16 referring to Mr. Perkins? I'll show you.

17 Do you want me to show you what you wrote?
18 It's right here, highlighted in blue.

19 MR. MEYERS: When the other Public
20 Defenders lawyers worked for you, this is the
21 actual document that started your federal
22 habeas petition; all right?

23 THE WITNESS: (Witness nodded.)

24 MR. MEYERS: This is part of the habeas
25 petition, so Mr. Cole is just asking you

1 about this language.

2 A. The one that's highlighted?

3 Q. I would like you to read that, and ask if
4 that's a correct statement?

5 A. I wouldn't say "refuse." He never did
6 refuse.

7 Q. So he never did refuse, so that's an
8 incorrect statement? And the part about appointed
9 counsel, I assume that's also incorrect; petitioner's
10 appointed counsel (indicating)?

13 0. He never refused?

16 Q. Okay. How did you learn that there was no
17 appeal filed?

18 MR. MEYERS: Can I call a quick time
19 out?

(Short recess)

21 A. After I contacted the Public Defenders
22 Office, everything they did, they would send me a copy of
23 it. And I don't know her name, but she had -- she sent
24 me a copy of the E-mail saying what they was doing, and
25 it said at the top, "No appeal has been filed."

1 Q. So when you contacted the Public Defender,
2 you thought you had had an appeal pending?

3 A. I wasn't for sure.

4 Q. What did you think?

5 A. Honestly, I thought I didn't have an
6 appeal.

7 Q. You did not have an appeal?

8 A. Right.

9 Q. So when did you first start to believe that
10 you did not have an appeal?

11 A. For sure? When did I know I didn't have an
12 appeal for sure?

13 Q. When did you begin to suspect that you
14 didn't have an appeal?

15 A. That's a good question. You're asking for
16 a specific date, time?

17 Q. Approximate time period that you began to
18 suspect that you did not have an appeal pending?

19 A. I knew something was wrong when -- it was a
20 person going to court with me at the same time, and I
21 happened to see them on the news, they was talking about
22 the appeal. And I hadn't gotten a letter or nothing, so
23 I --

24 Q. When was this?

25 A. I don't know the approximate time. It had

1 to be when I was at Lucasville because I was watching TV
2 and it was right there.

3 Q. When were you in Lucasville?

4 A. It had to be.

5 Q. When were you in Lucasville?

6 A. '98, '99.

7 Q. You contacted the Public Defender in
8 February of '98?

9 A. I did?

10 Q. Correct?

11 A. Right.

12 Q. And you were convicted in June of '96, am a
13 correct?

14 A. Correct.

15 Q. So my question again is, when did you begin
16 to suspect that you, in fact, did not have an appeal?
17 I'm not asking for a date, I'm asking for an approximate
18 month, even season, if you want.

19 A. I'm not for sure.

20 Q. So your testimony today is, is it fair to
21 say that you have no idea whatsoever when you began to
22 suspect that you didn't have an appeal pending?

23 A. I knew that. I knew the fact that I wasn't
24 getting any legal mail and everybody else was. When they
25 called your name for legal mail and I kept getting passed

1 over, I knew something was wrong. I also knew that when
2 I would call home and I would say, did you call
3 Mr. Perkins, they would say, he's not there, he's out of
4 the office. I knew something was wrong.

5 Q. So they said that pretty much from day one?

6 A. What?

7 Q. That they were, from day one they were
8 telling you they were having no contact with Mr. Perkins?

9 A. No. He would come and see me, but I'm
10 saying once I got to the penitentiary

11 Q. Once you were in the penitentiary after you
12 were convicted, from then on you had no contact with
13 Mr. Perkins?

14 A. Correct.

15 Q. And your family had no contact with
16 Mr. Perkins?

17 A. Correct.

18 Q. So you began to suspect fairly soon that
19 something might be going wrong then?

20 A. I waited. I waited -- From the time I got
21 to the penitentiary, I waited. Not because I wanted to.

22 Q. Are we talking days, weeks, months? What
23 are we talking about here?

24 A. Months, maybe a year. Because I didn't, I
25 didn't actually know what was going on until later on.

1 When I didn't understand it, basically I had just shut
2 down. They called it depression, I'm guessing, if you
3 want to call it that. I snapped out of it like, you
4 know, there was a reason why you didn't know because you
5 were sleeping all the time, you were just shut down. But
6 I eventually woke up and I said, something ain't right.
7 But as far as a date, I don't know. If I had to give a
8 date, I would say '98.

9 Q. Well, that would be after you contacted the
10 Public Defender?

11 A. When did I contact them?

12 Q. February of '98.

13 A. That would be the year.

14 Q. And prior to that you're saying you just
15 weren't sure because you shut down; is that what you're
16 saying?

17 A. Yes.

18 Q. So throughout 1997, it's your testimony
19 that you were uncertain whether or not you had an appeal
20 or not?

21 A. Well, I had saw Brian Perkins in '96, and
22 he already told me that appeals take time, I'm going to
23 take care of it. I mean he told me this out of his
24 mouth.

25 Q. Now the people who were trying to call

1 Mr. Perkins, your mother and cousins?

2 A. Family members.

3 Q. Family members? You had regular contact
4 with them?

5 A. I could call home, yes, they would accept
6 the call.

7 Q. And you asked them, I assume, is there an
8 appeal pending?

9 A. No.

10 Q. Did you ever talk about your appeal with
11 them?

12 A. I asked them, what did Mr. Perkins say.

13 Q. And what would they tell you?

14 A. We haven't talked to him.

15 Q. Would that -- Did that concern you?

16 A. Not at first.

17 Q. Did it concern you after a couple months?

18 A. No.

19 Q. When did it start to concern you?

20 A. About Mr. Perkins?

21 Q. Yes.

22 A. When I wasn't getting no legal mail at all.

23 Q. Did you ever contact anybody in the court
24 to find out if you had an appeal pending?

25 A. No.

1 Q. Why not?

2 A. I didn't know you could. I mean, who would
3 I write? The judge? I don't know.

4 Q. Could you identify any one event that
5 stands in your mind for when all of a sudden you
6 realized, hey, I don't have an appeal pending?

7 A. Probably when I, like I said, when I was
8 watching TV and there was -- they was talking about her
9 appeal and we was going to court at the same time.

10 Q. And this was well before you contacted the
11 Public Defender?

12 A. It might have been a few months after,
13 month or two after.

14 Q. After you had already contacted the Public
15 Defender?

16 A. No. When I saw it on TV.

17 Q. That was a couple months after you were
18 convicted? You tell me. I won't say another word.

19 A. When I saw the fact that she was getting an
20 appeal on TV, then I knew something was going on. So,
21 again, I contacted the Public Defender. First I went to
22 the law library, and basically they can't give you no law
23 advice but get a Public Defender.

24 Q. So several months before you contacted the
25 Public Defender, you watched this thing on TV and you

1 began to think, maybe I don't have an appeal; is that
2 what you're saying?

3 A. Yes.

4 Q. Did there ever come a time when you learned
5 that a notice of appeal had in fact been filed by
6 Mr. Perkins?

7 A. Yes.

8 Q. When did you learn that?

9 A. Maybe '04, '04.

10 Q. Within the last year?

11 A. Yes.

12 Q. Okay. Let me show you what I, I am marking
13 as Deposition Exhibit 2

14 (Exhibit No. 2 was marked for
15 identification.)

16 Q. Have you seen this exhibit before?

17 A. Yes.

18 Q. When did you first see it?

19 A. '04.

20 Q. And prior to 2004, you had no idea that
21 this notice of appeal had been filed?

22 A. No.

23 Q. Okay.

24 (Exhibit No. 3 was marked for
25 identification.)

1 Q. Let me show you now what I have marked as
2 Deposition Exhibit 3. Have you seen this document
3 before?

4 A. Yes.

5 Q. And when did you first see this document?

6 A. '04.

7 Q. Okay. You saw Exhibits 2 and 3 at the same
8 time?

9 A. I saw Exhibit 2 first.

10 Q. Who showed you these documents?

11 A. My attorney.

12 Q. Mr. Perkins? The Public Defender? Who are
13 we talking about?

14 A. Mr. Lee.

15 Q. Was the Public Defender who was
16 representing you?

17 A. (Witness nodded.)

18 Q. Since these weren't known to you, I assume
19 again that you never consulted with the Court of Appeals
20 in any way about this document or any appeal?

21 A. No.

22 Q. And you never asked any family member or
23 anybody else to check with the Court of Appeals, either,
24 about if you had an appeal pending.

25 (Exhibit No. 4 was marked for

1 identification.)

2 Q. Okay. Let me show you what I'm marking as
3 Deposition Exhibit 4, and ask if you could identify this
4 document?

5 A. Yes.

6 Q. What is it?

7 A. A letter I wrote to the Public Defenders
8 Office.

9 Q. Okay. Part of the letter, at least to me,
10 is illegible. I don't know if you can help me with it or
11 not. Let me read it to you and see if you can tell me
12 what part I can't read.

13 You're saying, "I am what they call
14 indigent. At this time I am in jail. I have, I think,
15 80 to a hundred years. I got that on May 30th, 1996."

16 Am I correct so far in what I've read?

17 A. Yes.

18 Q. Could you read the next line for me? It's,
19 I, something, something, for you to give me a lawyer to
20 serve on my appeal.

21 A. May 30th, 1996. "I would like for you to
22 give me a lawyer to work on my appeal. Can you help me?"

23 Q. You're saying "I would like"?

24 A. "For you."

25 Q. "To give me a lawyer to serve on my

1 appeal"?

2 A. "To work on my appeal."

3 Q. "Work"? Okay.

4 My understanding is that the Public
5 Defender responded fairly promptly by sending you what
6 I'm marking as Exhibit 5; is that correct?

7 A. Yes.

8 (Exhibit No. 5 was marked for
9 identification.)

10 Q. I take it you were satisfied with the speed
11 of their response?

12 A. Yes.

13 Q. My understanding is that you submitted the
14 questionnaire again fairly promptly, you submitted that
15 back to them. I don't want to know the specifics of what
16 you said, but you communicated with them in a timely
17 manner?

18 A. Yes.

19 Q. At that point in time, did you believe that
20 they were representing you?

21 A. The Public Defenders Office?

22 Q. Yes.

23 A. No.

24 Q. So you did not believe that they were going
25 to at that point in time -- At that point in time you did

1 not believe that they were pursuing an appeal on your
2 behalf in the Ohio courts?

3 A. No.

4 (Exhibit No. 6 was marked for
5 identification.)

6 Q. Let me show you what I have marked as
7 Exhibit 6, which is a letter, at least part of a letter
8 that you received from Robert Lane of the Ohio Public
9 Defenders Office, and that's dated May 13th, 1998.

10 Is it fair to say that still at this time
11 you did not believe that the appeal was pending?

12 A. Yes.

13 Q. Yes, what?

14 A. I did not believe an appeal was pending at
15 this time.

16 Q. Were you concerned that from May --
17 February to May there had been no legal action filed on
18 your behalf? Did that concern you?

19 A. Did it concern me that they didn't file a
20 legal action?

21 Q. (Nodded.)

22 A. No, it didn't concern me. He had wrote
23 back, so I wasn't concerned.

24 (Exhibit No. 7 was marked for
25 identification.)

1 Q. I'll show you now what I have marked as
2 Deposition Exhibit 7, and that's a letter from Mr. Tom
3 Wetterer, who was apparently taking over your
4 representation on your motion for delayed appeal.
5 Between May 26th and the end of August when your delayed
6 appeal was finally filed. Did you believe that there was
7 any litigation pending, or did you still believe it was
8 in the research stage?

9 A. I don't understand the question.

10 Q. Let me rephrase it. Mr. Wetterer
11 ultimately filed a delayed appeal motion on your behalf
12 in August of 1998; is that correct?

13 A. I guess.

14 Q. Prior to the filing of this delayed appeal
15 motion in August of 1998, you were aware of the fact that
16 no appeal had been filed by the Ohio Public Defender; is
17 that a correct statement?

18 A. Yes.

19 Q. And you were not concerned by the delay?

20 A. I probably just didn't understand what was
21 going on. The fact that he wrote me back after not
22 getting no legal mail --

23 Q. Are you aware of the fact that the Ohio
24 Attorney General's Office in this habeas case has taken
25 the position that your habeas corpus petition was not

1 timely filed?

2 A. Yes.

3 Q. I know you're not a lawyer, and if you have
4 no understanding, feel free to say so, but what is your
5 understanding of the statute of limitations, the time in
6 which you must file a habeas corpus petition?

7 MR. MEYERS: I object. What possible
8 material relevance is the question,
9 especially as phrased, elicited from a lay
10 person, his understanding of statute of
11 limitations in jurisprudence?

12 MR. COLE: His understanding -- Well,
13 again, we can debate this in front of a
14 judge. That's what this whole case comes
15 down to is the violation of the one-year
16 statute of limitations. I want to know if he
17 understood his duty to file in accordance
18 with federal law.

19 MR. MEYERS: I object and reserve it.
20 You can go ahead and answer, if you can.

21 A. What was the question again?

22 (Question read by reporter.)

23 A. I don't know.

24 Q. You're saying you have no knowledge one way
25 or the other; is that what "I don't know" means?

1 A. Yes.

2 Q. I'm through here. I don't know if you want
3 to ask anything.

4 MR. MEYERS: If I can ask a few, maybe
5 that will stop us from --

6 MR. COLE: Maybe I'll come up with
7 something else.

8 MR. MEYERS: -- needing to go to an
9 evidentiary hearing.

10 MR. COLE: Sure.

11 EXAMINATION

12 BY MR. MEYERS:

13 Q. Bruce, do you remember whether or not
14 when you first got picked up and locked up on this case,
15 before trial did you have an appointed lawyer or did you
16 get Perkins right away?

17 A. I had an appointed lawyer.

18 Q. Did you personally have, at that time have
19 any money or own anything that you could have sold for
20 cash so you personally could have afforded a lawyer?

21 A. No.

22 Q. How about after you got convicted and you
23 were in need of an appeal; did you personally have any
24 money in a bank anywhere, any kind of money or anything
25 of value that you could have sold for cash so you

1 personally could have hired an appeal lawyer?

2 A. No.

3 Q. Did your family or other -- whoever was
4 trying to help you pay Perkins for trial, did they lead
5 you to understand that they were willing to pay him for
6 your appeal?

7 A. Yes.

8 Q. Did Tom Wetterer, during the time he worked
9 for you and represented you, ever show you what's been
10 marked here today as Depo Exhibit 2 or 3?

11 A. No.

12 Q. With respect to what's been marked here
13 today as Depo Exhibit 1, would you clarify again, do you
14 know who actually wrote those words?

15 A. Mr. Wetterer.

16 Q. Okay. Did you understand -- When you
17 signed it as an affidavit, what was your understanding
18 when you signed it as an affidavit?

19 A. To make sure that I read everything that he
20 wrote down.

21 Q. Okay. By the time you signed this
22 affidavit, which the exhibit will teach us was, looks
23 like the 18th day of August of '98; is that right?

24 A. Yes.

25 Q. Had Wetterer led you to understand or

1 believe that Perkins failed to file a notice of appeal?

2 A. No.

3 Q. Let me ask it again.

4 MR. COLE: He answered the question.

5 Q. When you -- Mr. Cole had asked you to talk
6 with him a bit about what is numbered line 8 on that
7 thing.

8 A. Uh-huh.

9 Q. "My trial counsel failed to file a notice
10 of appeal." Was that the information you were receiving
11 from Wetterer at the time, that there was no notice of
12 appeal filed?

13 A. Yes.

14 Q. All right.

15 When Mr. Cole showed you the other,
16 lengthier document that was the copy of your habeas
17 petition, which you don't have right before you right
18 now, but -- did you personally write the words in this
19 habeas petition, by the way?

20 A. No.

21 Q. You remember signing it; you did sign the
22 habeas petition, right?

23 A. Yes.

24 Q. Were you relying on Wetterer to basically
25 represent you and guide you as your counsel at the time?

1 A. Yes.

2 Q. Did you -- You were showed Exhibits 4 and
3 5. Just for the record, by the way, what's marked here
4 today as Exhibit 5, am I correct that that contains one,
5 two, three, four, five, six different sheets of eight and
6 a half by 11 papers stapled in the upper, left hand?

7 A. Right.

8 Q. And does your handwriting appear anywhere
9 on pages 2, 3, 4, 5 or 6 of Exhibit 5?

10 A. Yes.

11 Q. And is that the information you entered on
12 a form that had been sent to you by the Public Defenders
13 Office?

14 A. Yes.

15 Q. Among the information completed, is there
16 any information pertaining to your financial situation at
17 the time in early '98?

18 A. Yes.

19 Q. And at the time in early 1998, did you
20 personally have cash or anything of value you could have
21 sold to turn into cash to hire your own appellate lawyer?

22 A. No.

23 Q. Throughout the time between when you first
24 wrote your letter and get your first response back from
25 the Public Defenders Office, in fact, if we look on

1 Exhibit 5 -- first on Exhibit 4 -- Do you, by the way, on
2 Exhibit 4 did you see a date on that in your own
3 handwriting?

4 MR. COLE: The exhibits speak for
5 themselves. I would object to that question.

6 MR. MEYERS: I don't know how a cold
7 document could speak to handwriting.

8 MR. COLE: But there's a date on the
9 document. It's there.

10 MR. MEYERS: Well, do you see a date on
11 the document in your own handwriting?

12 THE WITNESS: No.

13 MR. MEYERS: Okay. You don't happen to
14 have the envelope?

15 MR. COLE: (Indicating).

16 MR. MEYERS: Is that the one? The
17 record will speak for that.

18 Q. On Exhibit 4, as you look at it today, am I
19 correct for the record that's a single piece of eight and
20 a half by 11 paper that appears to contain a Xerox copy
21 of something in your handwriting; is that right?

22 A. Right.

23 Q. And it also contains something at the very
24 top, the number 10/1, dash, the word "client," and some
25 letters circled along with the 2-6-98. Is any of that

1 your handwriting?

2 A. No.

3 Q. Okay. That is -- Did you testify that to
4 your best recollection, that is the first letter you ever
5 sent to the office of the Ohio Public Defender?

6 A. That I remember.

7 Q. Okay. And then Exhibit 5, which we've
8 talked about a minute ago, what date is typed, entered on
9 that?

10 A. February the 6th, 1998.

11 Q. Now from your first -- and I think you told
12 Mr. Cole you remember generally getting a response back
13 pretty quick after the first letter you sent to the
14 Public Defender?

15 A. Yes.

16 Q. And over the course of time between your
17 first response back from them and, say, the date you
18 signed this affidavit, do you recall having other
19 contact? And I think you saw -- what they marked, Mr.
20 Cole, A.G., represented as 7 this morning, that's a
21 letter from Wetterer. 6 is a letter from Lane; correct?

22 A. Yes.

23 Q. So overall, were you left with the
24 impression that the Public Defender was ignoring you or
25 that they were responding?

1 A. Responding quickly.

2 Q. And were you left with the impression once
3 you realized you had no appeal pending, that you had to
4 get that done on your own without a lawyer, or were you
5 thinking the Public Defender was working towards that
6 direction for you?

7 A. I thought the Public Defender was working
8 towards it.

9 Q. Mr. Cole asked you several times in kind of
10 different directions when you first -- if you could have,
11 would you pinpoint a time when a light went off and you
12 realized you didn't have an appeal. Do you remember
13 those questions?

14 A. Yes.

15 Q. Let me ask it this way. Generally
16 speaking, do you remember whether or not your first
17 letter to the Public Defender was mailed off by you
18 shortly after you formed the understanding that there was
19 something wrong with your appeal, or was it months and
20 months after or what? Did -- Do you have any way of
21 starting from this document they've marked here today as
22 their Exhibit 4, knowing -- as you've said, that's your
23 first writing to the Public Defender -- looking back in
24 time in your memory to tell us how long before you might
25 have sent that letter you realized there was something

1 wrong with your appeal?

2 A. When I formed it in my head that something
3 is wrong, I wrote the Public Defender, I'd say kind of
4 quick.

5 Q. Okay. I have nothing further.

6 MR. COLE: Probably only one more
7 question for you, sir, based on Mr. Meyers
8 questions.

9 RECROSS-EXAMINATION

10 BY MR. COLE:

11 Q. Did I hear you say that as far as you're
12 concerned, that the Public Defender responded quickly in
13 terms of preparing an appeal for you?

14 A. I say he responded to my letters.

15 Q. Do you feel that they responded quickly in
16 terms of filing a delay of motion of appeal in the filing
17 courts?

18 A. You're saying, do I feel like --

19 Q. Do you feel that the Ohio Public Defender
20 pursued an appeal on your behalf in the Ohio courts in a
21 quick, timely manner from the time you contacted them in
22 February till the time they filed the appeal in August?

23 A. I don't know.

24 Q. You've never lodged any complaints about
25 them not pursuing your appeal in a timely manner; is that

1 a fair statement?

2 A. Yes.

3 MR. MEYERS: Did you say no or yes?

4 MR. COLE: He said yes.

5 Q. Yes, you've never complained?

6 A. Yes.

7 Q. Yes?

8 A. Yes, I've never complained.

9 Q. Okay. Thank you very much for your time.

10 MR. MEYERS: Thank you.

11

12 (Signature waived.)

13 David Newman

14

15 (Deposition concluded.)

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1 CERTIFICATE

2 STATE OF OHIO :

3 : SS

4 COUNTY OF CLERMONT:

5 I, Shandy Ehde, court reporter and Notary Public in
6 and for the State of Ohio, do certify that before the
7 giving of his deposition, BRUCE WOODS was by me first
8 duly sworn to depose the truth, the whole truth, nothing
9 but the truth; that the foregoing deposition was given at
10 said time and place by notice and agreement of counsel,
11 that said deposition was taken in stenotypy and
12 transcribed by computer under my supervision, and
13 submission to the witness for signature was expressly
14 waived.

15 I certify that I am neither a relative of, nor
16 attorney for any of the parties to this cause, nor
17 relative or employee of any of their counsel, and have no
18 interest whatever in the result of this action.

19 IN WITNESS WHEREOF, I have set my hand and seal at
20 Cincinnati, Ohio this 4th day of May, 2005.

21
22 Shandy Ehde

23 Notary Public - State of Ohio

24 My Commission Expires:

25 August 27, 2007